

FILED

AUG 27 2019

Clerk, U.S. District Court
District Of Montana
Missoula

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

BOBBY FRANCIS LOWRY,

Plaintiff,

vs.

**MICHAEL D. REGINALD,
MONTANA DEPARTMENT OF
CORRECTIONS, UNKNOWN
OWNERS OF MONTANA BASED
PRE-RELEASE CENTERS,**

Respondent.

CV 19-30-H-DLC-JTJ

ORDER

United States Magistrate Judge John T. Johnston entered his Order and Findings and Recommendations on July 19, 2019. (Doc. 6.) Judge Johnston found that Plaintiff Bobby Francis Lowry's Complaint was "sufficient to warrant ordering [the Director of the Montana Department of Corrections] to file an answer," and he entered orders accordingly. (*Id.* at 1 (quoting *Wilhelm v. Rotman*, 680 F.3d 1113, 1116 (9th Cir. 2012))). Judge Johnston also found that the Eleventh Amendment bars Lowry's claims against the Montana Department of Corrections and recommended that the Court dismiss that state agency from this matter.

Lowry failed to timely object to the Findings and Recommendations, and so waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews for clear error those findings and recommendations to which no party objects. *See Thomas v. Arn*, 474 U.S. 140, 149–53 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been made.” *Wash. Mut., Inc. v. United States*, 856 F.3d 711, 721 (9th Cir. 2017) (citation omitted).


Having reviewed the Findings and Recommendation (Doc. 6), the Court finds no clear error in Judge Johnston’s recommendation to dismiss the Montana Department of Corrections on the grounds that that the State of Montana has waived immunity only for tort claims brought in state court. (Doc. 6 at 2–3.) Because the Montana Department of Corrections is a state agency, it is entitled to Eleventh Amendment immunity. *See Idaho v. Couer d’Alene Tribe of Idaho*, 521 U.S. 261, 267–68 (1997).

Accordingly, IT IS ORDERED:

(1) Judge Johnston’s Findings and Recommendations (Doc. 6) is ADOPTED IN FULL; and

(2) the Montana Department of Corrections is DISMISSED.

DATED this 27th day of August, 2019.



Dana L. Christensen, Chief Judge
United States District Court